

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 1:18:CR:214-1

JOE LOUIS FIELDS III,

HON. GORDON J. QUIST

Defendant.

OPINION AND ORDER DENYING
DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

Defendant, Joe Louis Fields III, has been charged in a multi-count indictment with various controlled-substance offenses, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B)(viii). Fields moves to suppress all evidence obtained pursuant to a cell phone search warrant that Magistrate Judge Ray Kent issued on March 22, 2018, as well as all subsequent warrants that were issued based on location information resulting from the March 22, 2018, warrant. The motion is fully briefed, and the Court finds that a hearing is not required.

For the reasons set forth below, the Court will deny Fields's motion.

I. BACKGROUND

On March 22, 2018, ATF Special Agent Andrew Holt submitted a search warrant application to Magistrate Judge Ray Kent, who issued the warrant after reviewing the supporting materials. (ECF No. 60-1.) The warrant authorized a search of records and information, including location information, associated with a Sprint cell phone with a number ending in 8715 (the Target Cell Phone). (*Id.* at PageID.145.)

In support of the application, Agent Holt submitted an affidavit that contained details of his investigation of Fields. Agent Holt stated that he had been investigating Fields and James Hayes for controlled-substances offenses, as well as possession of a firearm by a convicted felon. (*Id.* at PageID.150.) Agent Holt also described information he received from a confidential informant that was central to his application. On February 27, 2018, the informant told Agent Holt and Task Force Officer Matt Kubiak that the informant could purchase heroin, cocaine, and methamphetamine from “Joe Fields.” The informant said that Fields lived on Diamond Avenue near Knapp Street and used the Target Cell Phone. The informant said that Fields owned firearms and that the informant had seen Fields with firearms. The informant was shown a picture of Fields and confirmed that the photo was of the person the informant knew as Joe Fields. Upon searching a law enforcement database, Agent Holt found that Fields had been convicted of several drug-related misdemeanor offenses and had a drivers license with a listed address on Diamond Avenue, near the area the informant had described. The informant also said that Fields sold drugs with his cousin, Douglas Hayes. (*Id.* at PageID.151.)

Agent Holt described three controlled drug buys that the informant made by calling the Target Cell Phone. In each instance, Agent Holt and/or Officer Kubiak searched the informant and the informant’s vehicle for currency and contraband prior to the buy; provided the informant with prerecorded ATF funds; followed the informant to the buy location and watched the informant enter and leave the premises; followed the informant from the buy location to a predetermined location; the informant turned over a quantity of drugs to the officers; and the officers conducted a post-buy search of the informant and the vehicle for currency and contraband. (*Id.* at PageID.152–54.) The specifics of each transaction are as follows:

- On March 6, 2018, Agent Holt had the informant order a quantity of methamphetamine by calling the Target Cell Phone while in Agent Holt's presence. Fields told the informant to meet him at an address on Barnett Street near Lafayette Ave. The officers followed the informant to 233 Barnett Street. A few minutes later, the informant told Agent Holt that he/she was inside the upper apartment at 233 Barnett Street.¹ The informant left the premises about five minutes later. When the officers met the informant, the informant turned over a bag containing methamphetamine. The informant told the officers that he/she had contacted Fields en route to the buy location using the Target Cell Phone, and Fields told the informant to go to the upper apartment at 233 Barnett Street. The informant said that several individuals, including Fields and Hayes, were present. The informant said that Fields sold him/her the methamphetamine and offered to sell an additional amount, which was present on the kitchen table, and that Hayes offered to sell the informant cocaine, which was sitting on Hayes's lap. (*Id.* at PageID.152–53.)
- On March 9, 2018, Agent Holt asked the informant to purchase cocaine. The informant called Fields at the Target Cell Phone. Fields told the informant that he was out driving around but he would meet the informant at 233 Barnett Street. The informant, wearing a transmitting device, drove to 233 Barnett Street, and then called Fields again on the Target Cell Phone. The informant told Fields that he/she was waiting in front of 233 Barnett Street. Fields told the informant that someone was waiting inside the residence. The informant went inside and purchased cocaine from an unknown male. (*Id.* at PageID.153.)
- On March 15, 2018, Agent Holt asked the informant to purchase methamphetamine. The informant called the Target Cell Phone and Fields instructed the informant to meet him at a mutual location in Grand Rapids. Agent Holt fitted the informant with a transmitting device. The informant told the officers that he had contacted Fields and Fields was already at the mutual location. The informant drove to the mutual location and went inside. The officers heard Fields make contact with several individuals. A short time later, the informant left the mutual location. Agent Holt contacted the informant, who told Agent Holt that Fields had been with Hayes and an unknown female and that they were driving a gray Kia SUV. When the officers met the informant in person, the informant said that he/she purchased the methamphetamine from Fields. About fifteen minutes after the informant left the mutual location, officers observed Fields, Hayes, and the unknown female leaving the mutual location in a gray Kia SUV. (*Id.* at PageID.153–54.)

II. DISCUSSION

As the proponent of the motion to suppress, Fields has “the burden of establishing that the evidence was secured by an unlawful search.” *United States v. Blakeney*, 942 F.2d 1001, 1005 (6th

¹It is not clear whether the informant was wearing a transmitting device or whether the informant contacted the officers by text or other means.

Cir. 1991). Fields argues that Agent Holt's affidavit failed to provide the magistrate judge a substantial basis for finding that probable cause existed to believe that obtaining location and other data for the Target Cell Phone and Fields would yield evidence of a crime. In particular, Fields argues that, other than the word of a confidential informant of unknown reliability, nothing in the warrant connected Fields to criminal activity, particularly since neither Agent Holt nor any other law enforcement officer actually saw or heard Fields participate in the three buys. Fields further argues that the *Leon* good-faith exception does not save the warrant because no reasonable officer could have believed that the warrant contained sufficient reliable information to believe that Fields was involved in drug distribution.

“Probable cause is defined as ‘reasonable grounds for belief, supported by less than prima facie proof but more than mere suspicion.’” *United States v. Smith*, 182 F.3d 473, 477 (6th Cir. 1999) (quoting *United States v. Bennett*, 905 F.2d 931, 934 (6th Cir. 1990)). “Probable cause exists when there is a fair probability, given the totality of the circumstances, that contraband or evidence of a crime will be found in a particular place.” *United States v. Loggins*, 777 F.2d 336, 338 (6th Cir. 1985) (internal quotation marks omitted).

The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the “veracity” and “basis of knowledge” of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed.

Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983) (internal quotation marks and alterations omitted). A reviewing court must accord a magistrate's finding “great deference.” *United States v. Algie*, 721 F.2d 1039, 1041 (6th Cir. 1983).

A supporting affidavit “need not establish beyond a reasonable doubt that incriminating evidence will be found on the premises to be searched.” *Blakeney*, 942 F.2d at 1025. Nor must an

affidavit be “perfect” or “provide every specific piece of information to be upheld.” *Hale v. Kart*, 396 F.3d 721, 725 (6th Cir. 2005). However, it must demonstrate the existence of a nexus, *i.e.*, it must provide enough facts to establish a fair probability that incriminating evidence will be found in the particular place. *United States v. Carpenter*, 360 F.3d 591, 594 (6th Cir. 2004) (en banc). Thus, “the affidavit must suggest ‘that there is reasonable cause to believe that the specific “things” to be searched for and seized are located on the property to which entry is sought’ and not merely ‘that the owner of property is suspected of a crime.’” *United States v. McPhearson*, 469 F.3d 518, 524 (6th Cir. 2006) (quoting *Zurcher v. Stanford Daily*, 436 U.S. 547, 556, 98 S. Ct. 1970, 1976–77 (1978)).

Generally, when a warrant issues on the basis of information provided by a confidential informant, a court “must consider the veracity, reliability, and the basis of knowledge for that information as part of the totality of the circumstances.” *United States v. Helton*, 314 F.3d 812, 819 (6th Cir. 2003). “[A]n affidavit that supplies little information concerning an informant’s reliability may support a finding of probable cause, under the totality of the circumstances, if it includes sufficient corroborating information.” *United States v. Woosley*, 361 F.3d 924, 927 (6th Cir. 2004) (citing *Gates*, 462 U.S. at 241–45, 103 S. Ct. at 2334–35). For example, “[k]nowledge of illegal drug activities, obtained by law enforcement officials through a confidential informant and independent surveillance, supports a district court’s finding of probable cause to support the issuance of a warrant.” *United States v. Jones*, 159 F.3d 969, 974 (6th Cir. 1998).

Recently, in *Carpenter v. United States*, __ U.S. __, 138 S. Ct. 2206 (2018), the Supreme Court held that a law enforcement agency’s acquisition of cell-site location information constitutes a search under the Fourth Amendment, for which law enforcement must “obtain a warrant supported by probable cause.” *Id.* at 2022. The Court did not indicate that any different standard applied to

a probable cause determination for cell tracking information. Accordingly, the Court applies the traditional probable cause analysis to the cell phone tracking warrant at issue.

As the government concedes, Agent Holt's affidavit contained little or no information concerning the informant's history of, or reputation for, reliability. Independent law enforcement corroboration is thus necessary to fill the veracity and reliability gap in Agent Holt's affidavit. Fields emphasizes that his primary attack on the affidavit is that it provides nothing more than statements from the confidential informant, who was not known to be reliable, to link Fields to drug trafficking. More specifically, Fields notes, "officers did not see or hear him participate in any controlled buys." (ECF No. 68-1 at PageID.229.)

While no law enforcement officer actually observed Fields conducting a drug sale, Agent Holt's affidavit nonetheless provided the magistrate judge a substantial basis to conclude that location information from the Target Cell Phone would produce or lead to incriminating evidence. Initially, the affidavit details Agent Holt's corroboration of the non-criminal details the informant provided, including Field's residence location. More importantly, the affidavit details three subsequent controlled drug buys, each initiated by the informant calling the Target Cell Phone and each resulting in the informant's purchase of illegal drugs. Each controlled buy independently verified what the informant told Agent Holt and demonstrated that the Target Cell Phone was key to those transactions. The warrant authorized tracking information not for Fields, but for the Target Cell Phone, without regard to who was using it. And, as noted above, the pertinent inquiry for probable cause is whether there is fair probability that the object of the search will yield evidence of criminal activity. The magistrate judge thus could have reasonably concluded that someone—likely Fields—was using the Target Cell Phone to conduct drug transactions and that location information for the Target Cell Phone would generate evidence to further the investigation.

Even if it were necessary to connect Fields to the controlled buys, information generated from the third buy provided ample basis to do that. Law enforcement's observation of Fields leaving the scene of the third buy provided the critical link between Fields and the controlled buys and the Target Cell Phone and reinforced the informant's reliability. The fact that the officers did not directly observe Fields conveying the drugs to the informant is of no consequence. *See United States v. Smith*, 337 F. App'x 500, 504 (6th Cir. 2009) (finding probable cause based on the totality of the circumstances even though the officer could not observe the informant inside the residence because "the proper measures were taken . . . to ensure the reliability of the controlled purchase, including thoroughly searching the informant and the vehicle used before the purchase and maintaining a visual on the confidential informant going to and coming from the residence").

Finally, the informant was not named in the affidavit and thus was not known to the magistrate judge, but this is not an anonymous tipster case. Based upon the information in the affidavit, which referred to the informant as a "cooperating defendant," and the interactions between Agent Holt and the informant, it is obvious that Agent Holt knew the informant. "The statements of an informant . . . , whose identity was known to the police and who would be subject to prosecution for making a false report, are . . . entitled to far greater weight than those of an anonymous source." *United States v. Dyer*, 580 F.3d 386, 391 (6th Cir. 2009) (quoting *United States v. May*, 399 F.3d 817, 824–25 (6th Cir. 2005)) (first alteration in original). Thus, the information from the informant carried "far greater weight" than information obtained from an anonymous source.

Fields suggests that the warrant would be invalid under a pre-*Carpenter* probable cause standard that a district judge in the Eastern District of Michigan formulated in *United States v. Powell*, 943 F. Supp. 2d 759 (E.D. Mich. 2013). As Fields concedes, the district court's decision

in *Powell* is not binding on this Court and is at odds with *Carpenter*'s unqualified statement that a warrant for cell location information need only be analyzed under traditional probable cause principles. Because the Court has already analyzed Fields's motion under traditional probable cause standards, the Court need not address Field's argument under *Powell*.

Finally, given the Court's finding of probable cause, it need not address the good-faith exception.

III. CONCLUSION

Because the March 22, 2018, warrant was supported by probable cause, the Court will deny Fields's motion to suppress.

Accordingly, Defendant's Motion to Suppress Evidence (ECF No. 53) is **DENIED**.

IT IS SO ORDERED.

Dated: June 14, 2019

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE